

APPEAL NO. 030498
FILED APRIL 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 28, 2003. The hearing officer determined that the respondent (claimant) was not in a state of intoxication from the introduction of a controlled substance at the time of the claimed injury, and that the claimant had disability from October 31, 2000, through April 2, 2001. The appellant (carrier) appeals these determinations. The appeal file contains no response from the claimant.

DECISION

Affirmed.

A claimant has the burden of establishing that a compensable injury was sustained. An insurance carrier is not liable for compensation if an injury occurred while the employee was in a state of intoxication. Section 406.032(1)(A). Section 401.013(b)(2)(B), applicable in this case, defines intoxication as not having normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code. A claimant need not prove he was not intoxicated as there is a presumption of sobriety, but that when a carrier presents evidence of intoxication, raising a question of fact, the claimant then has the burden to prove he was not intoxicated at the time of injury. Texas Workers' Compensation Commission Appeal No. 951373, decided September 28, 1995. While a positive drug test, such as in this case, can shift the burden of proof to the claimant, it does not, in and of itself, compel a finding of intoxication at the time of injury. Texas Workers' Compensation Commission Appeal No. 941099, decided September 30, 1994. See also Texas Workers' Compensation Commission Appeal No. 92173, decided June 15, 1992. Compare Texas Workers' Compensation Commission Appeal No. 950656, decided June 9, 1995. Texas Workers' Compensation Commission Appeal No. 950266, decided March 31, 1995, citing prior Appeals Panel decisions, stated that lay evidence as to the claimant's faculties while at work was admissible.

In the present case, the hearing officer found that there was sufficient evidence to shift the burden of proof of sobriety to the claimant, but that the claimant established that he had the normal use of his mental and physical faculties at the time of the injury and, therefore, the carrier is not relieved from liability. Whether the claimant was intoxicated at the time of the injury and whether he had disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the

evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge